

## Assembly Bill No. 2238

### CHAPTER 769

An act to add Section 8301.5 to the Health and Safety Code, relating to cemeteries.

[Approved by Governor September 21, 1996. Filed  
with Secretary of State September 23, 1996.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2238, W. Murray. Private cemeteries: restrictions based on race, ethnicity or gender.

Existing law permits a private cemetery to limit the use of all property within its cemetery.

This bill would provide that nothing in that provision shall be construed to permit a private cemetery to discriminate against any person based on race or gender regarding the use of any property within the cemetery. The bill would provide that this does not preclude the establishment or operation of cemeteries for purposes of furthering interests related to association where the purpose and effect is not to discriminate against persons on the basis of race or gender.

This bill would not apply to Native American tribal burial grounds or cemeteries not subject to state jurisdiction.

*The people of the State of California do enact as follows:*

SECTION 1. Section 8301.5 is added to the Health and Safety Code, to read:

8301.5. (a) Nothing in Section 8301 shall be construed to permit a cemetery authority to discriminate against any person based upon race or gender regarding the use of any property within the cemetery.

(b) The Legislature recognizes, however, that although discrimination against persons based upon race or gender is prohibited, there are strong cultural, social, and other proper reasons for people to seek to continue association with certain groups even in death.

(c) In the same way that a family may purchase contiguous plots to ensure that family members will be buried in close proximity to one another, and in the same way that a religious group may, similarly, establish and operate a cemetery for its members, or that veterans groups may establish and operate cemeteries for veterans, the law recognizes that members of cultural, social, or other groups with strong ties are not precluded from establishing and operating

cemeteries for the purpose of furthering their desire to continue to associate after interment.

(d) The urge to associate even after death also stems from an intense social and cultural need to ensure that people are connected with their past, and also to ensure that the graves and surrounding grounds are kept, tended, adorned, and embellished according to the desires and beliefs of the decedent, family, or group.

(e) The Legislature also recognizes, that the creation or operation of a cemetery for a particular group by necessity entails some exclusionary aspects. However, the exclusionary aspects are permitted only to the extent that the purpose and effect is to include persons, as set forth in this section, rather than to exclude persons based upon race or gender.

(f) Although it is, indeed, a difficult task to permit creation and operation of cemeteries that may exclude persons that are not within the social, cultural, or other group while also assuring that the cemetery is not discriminating based upon race or gender, strong public policy compels that we perform the task. To prohibit all association limitations in the creation and operation of cemeteries would certainly ensure that no discrimination based upon race or gender occurred; however, it would be overbroad in that it would preclude activity that is not so motivated and that does not have that effect.

(g) Therefore, subdivision (a) does not preclude the establishment or operation of cemeteries for the purposes set forth in this section to the extent that, and so long as the purpose and effect is to further a sincere and bona fide association interest, rather than to discriminate against persons on the basis of race or gender.

(h) Nothing in this section applies to Native American tribal burial grounds or cemeteries that, pursuant to federal law, are not subject to state jurisdiction.

